PLASTECH INDUSTRIES SYSTEM SDN BHD v. N & C RESOURCES SDN BHD & ORS

HIGH COURT MALAYA, KUALA LUMPUR
AZIZAH NAWAWI J
[CIVIL SUIT NO: D-22IP-49-2009]
18 JUNE 2015

CIVIL PROCEDURE: *Contempt of court – Committal proceedings – Discrepancies in documents attached to affidavits of compliance of judgment – Whether documents were suppressed – Whether there was interference in administration of justice – Whether amounted to contempt of court – Whether warranted committal order – Rules of Court 2012, O. 52*

The plaintiff had commenced committal proceedings against the defendants for non-compliance of the judgment in *Plastech Industrial Systems Sdn Bhd v. N&C Resources Sdn Bhd & Ors* [2013] 9 CLJ 404 ('the judgment'). The defendants were found guilty and were ordered to pay the fines ('the first contempt'). After the commencement of the first contempt proceedings and for the purpose of compliance with the judgment, the defendants filed several affidavits stating that they have complied with the judgment along with catalogues, statements of accounts and sales and purchase orders. The plaintiff found many discrepancies in the documents received from the third defendant, which formed the basis of this second contempt proceeding. In the meantime, the third defendant applied for a discharge from part of the order of the first contempt proceedings on the ground that the third defendant had rendered full cooperation and assistance to the plaintiff in complying with the judgment and therefore ceased to be in non-compliance. As the plaintiff did not raise any objection, the application for a discharge was allowed. Subsequently, the first, second and fourth defendants applied for the same on the ground that since the plaintiff did not object to the application made by the third defendant, then there was compliance with the judgment. These applications were also allowed. In the present application, the plaintiff sought for an order of committal under O. 52 of the Rules of Court 2012 to be made against the first, second and fourth defendants.

Held (allowing application):

(1) When the first, second and fourth defendants affirmed affidavits to state that they have complied with the judgment and that they had given all the relevant documents to the plaintiff, they have lied on oath with regards to the same. They had conveniently changed the dates of the invoices from post to pre-judgment dates. They lied on oath with regards to the delivery of the moulds. They also failed to disclose the sales that they had made post-judgment. The first, second and fourth defendants

clearly suppressed facts to the detriment of the plaintiff which were material and required for the purpose of assessing the profits as ordered by the trial judge. (para 27)

(2) It was the first, second and fourth defendants' contention that the affidavit of the third defendant was not reliable and must not be accepted by the court. However, bearing in mind that the first, second and fourth defendants themselves relied on the same documents given by the third defendant to the plaintiff to apply for a discharge, they could not now say the same documents must also be rejected. (para 28)

(3) There was an interference with the administration of justice warranting a committal order. The acts and conducts of the first, second and fourth defendants were serious and connected to the proceedings and clearly amounted to an interference with the due administration of justice and constituted contempt of court. In addition to that, they had actually directly interfered with it by the act of lying on oath and by suppressing material documents. (paras 37, 38 & 39)

(4) A custodial sentence was warranted. The second and fourth defendant were sentenced to two months imprisonment each while the first defendant was ordered to pay a fine of RM50,000 to the company. (para 45)

Case(s) referred to:

Cheah Cheng Hock v. PP [1986] 1 CLJ 169; [1986] CLJ (Rep) 84 SC ***(refd)***

Chu Choon Moi v. Ngan Sew Tin [1985] 1 LNS 134 FC ***(refd)***

Monatech (M) Sdn Bhd v. Jasa Keramat Sdn Bhd [2002] 4 CLJ 401 FC ***(refd)***

Murray Hiebert v. Chandra Sri Ram [1999] 4 CLJ 65 CA ***(refd)***

Plastech Industrial Systems Sdn Bhd v. N & C Resources Sdn Bhd & Ors [2012] 5 MLJ 258 ***(refd)***

Plastech Industrial Systems Sdn Bhd v. N & C Resources Sdn Bhd & Ors [2014] 2 MLRH 231 ***(refd)***

Plastech Industrial Systems Sdn Bhd v. Pembinaan Sumber Emas Sdn Bhd [2010] 1 LNS 1772 HC ***(refd)***

Tan Sri Dato' (Dr) Rozali Ismail & Ors v. Lim Pang Cheong & Ors [2012] 2 CLJ 849 FC ***(refd)***

Legislation referred to:

Rules of Court 2012, O. 52

Source(s) referred to:

Borries and Lowe, *The Law of Contempt*, 3rd edn

For the plaintiff - Justin Voon (Sam How with him); M/s Justin Voon Chooi & Wing
For the 1st, 2nd, and 4th defendants - Rajindar Singh (Clinton Gomez with him); M/s Rajindar Singh Veriah & Co

Reported by Najib Tamby

JUDGMENT

Azizah Nawawi J:

Application

[1] Enclosure (79) is the plaintiff's application for an order of committal under O. 52 Rules of Court 2012 to be made against the first, second and fourth defendants, namely:

(i) Innotech Formwork System Sdn Bhd (formerly known as N & C Resources Sdn Bhd) ('first defendant');

(ii) Chuah Teik Huat ('second defendant'); and

(iii) Nga Poh Choo ('fourth defendant').

[2] The application is premised on the leave to commence contempt proceedings granted by this court on 18 November 2013.

[3] After hearing the application, the court finds the first, second and fourth defendants guilty of contempt, and after hearing their mitigations, the following sentence was made:

(i) that the first defendant was fined RM50,000 to be paid within two months, failing which the officers of the first defendant is to pay the fine;

(ii) that the second defendant be sentenced to two months imprisonment; and

(iii) that the fourth defendant be sentenced to two months imprisonment.

The Salient Facts

[4] The main suit was disposed by Justice Azahar Mohamed (now Federal Court Judge) in *Plastech Industrial Systems Sdn Bhd v. N & C Resources Sdn Bhd & Ors* [2012] 5 MLJ 258. Essentially, the plaintiff sued the defendants for copyright infringement, passing-off, unlawfully taking and using the plaintiff's proprietary information, breach of fiduciary duties, breach of fiduciary duty of confidentiality and breach of trust. After a full trial, Justice Azahar Mohamed entered judgment for the plaintiff.

[5] The defendants' appeal to the Court of Appeal was struck out and leave to appeal was refused by the Federal Court on 15 October 2012.

[6] On 22 August 2012, as can be seen from encl. (36A), the plaintiff commenced committal proceedings against all the defendants for non-compliance with para. (2) of the judgment of the court ('the judgment'), which reads:

> (2) Suatu Perintah mandatori yang mengarahkan defendan-defendan dalam jangka masa tujuh (7) hari dari penyerahan Perintah ini kepada mereka, menghantar-serah ('delivery up') kepada pihak Plaintif atau menyebabkan untuk dihantar-serah kepada milikan pihak plaintif:-

A (a) Kesemua katalog-katalog Defendan-defendan yang melanggar hakcipta dalam KATALOG-KATALOG PLAINTIF dan/atau GAMBAR-GAMBAR Plaintif dan/atau Maklumat Proprietari Plaintif;

(b) Kesemua acuan dan produk-produk yang mengandungi atau dihasilkan dengan menggunakan Maklumat Proprietari Plaintif yang B berada dalam milikan, kuasa, jagaan atau kawalan Defendan-Defendan;

(c) Identiti-identiti kesemua pihak yang terlibat dalam mendedahkan, menggunakan, berkomunikasi, menyebarkan dan/atau menyiarkan melalui apa-apa cara dan/atau kegunaan untuk manfaat Defendan- C defendan atau mana-mana pihak ketiga apa-apa atau semua Maklumat Proprietari yang dimiliki Plaintif;

(d) Mengemukakan keterangan keuntungan ("account of profits") berkenaan kerja-kerja atau projek-projek yang diperolehi, dijalankan dan/atau disempurnakan yang merupakan hasil perbuatan- D perbuatan pelanggaran hakcipta berkenaan dengan GAMBAR - GAMBAR dan/atau KATALOG-KATALOG Plaintif, perbuatan-perbuatan pengelirupaan terhadap Plaintif, penyalahgunaan Maklumat Proprietari Plaintif, kemungkiran kewajipan fidusiari, kemungkiran kewajipan kesetiaan ("fidelity") kemungkiran perjanjian pekerjaan, frod dan/atau bersubahat untuk frod. E

[7] Paragraph (ii) of the judgment which deals with the delivery of the moulds reads as follows:

(ii) Bahawa Defendan-Defendan Pertama, Ketiga dan Keempat menghantar-serah ("delivery up") acuan-acuan ("moulds") [seperti F yang dinyatakan dalam perenggan 2(b) Penghakiman bertarikh 6 Oktober 2011] kepada pihak ketiga yang dipersetujui di antara pihak-pihak sementara menunggu pelupusan rayuan Defendan-Defendan Pertama, Ketiga dan Keempat di Mahkamah Rayuan di mana caj penyimpanan akan ditanggung oleh pihak Plaintif dengan kebebasan diberi kepada pihak Plaintif untuk menuntut balik caj G penyimpanan tersebut daripada Defendan-Defendan Pertama, Ketiga dan Keempat jikalau rayuan Defendan-Defendan Pertama, Ketiga dan Keempat di Mahkamah Rayuan telah ditolak oleh Mahkamah Rayuan.

[8] The court find all the defendants guilty of contempt of court and were H fined between RM10,000 to RM20,000 with additional fine of RM100 each day of continuous non-compliance of the judgment. The decision of the court can be seen from *Plastech Industrial Systems Sdn Bhd v. N & C Resources Sdn Bhd & Ors* [2014] 2 MLRH 231 ('the first contempt').

[9] The defendants paid the fines and did not appeal against the first I contempt.

[10] After the commencement of first contempt proceedings, and for the purpose of compliance with the judgment, the defendants have filed several affidavits, including two affidavits affirmed by Nga Poh Choo on 4 February 2013 and 1 March 2013 and two affidavits affirmed by Chuah Teik Huat, on 4 February 2013 and 1 March 2013. In these affidavits, the defendants have essentially stated that they have complied with para. 2 of the judgment. These affidavits are in support of two letters issued by their counsel dated 20 November 2012 and 21 December 2012.

[11] In these two letters issued by the defendants' lawyer, Tetuan Rajindar Singh Veriah & Co, the defendants submitted 121 catalogues, statements of accounts for 2009, 2010 and 2011, invoices, purchase orders and statement of sales for 2010 and 2011. Lastly, in a letter dated 26 February 2013, the defendants' lawyer states as follows:

> there are no further relevant documents and that all documents have already been forwarded to you *vide* our letters dated 20th November, 2012 and 21.12.2012.

[12] For the purpose of compliance with the judgment, the plaintiff had also received documents from the third defendant, Kenny Yong Kuet Wee, which includes monthly sales statement from January 2011 - December 2011, letters, purchase order and/or sales agreement involving Innotech Engineering System Sdn Bhd, Tectronics Works Company, Welflex Engineering Sdn Bhd, Perfect Hallmark Sdn Bhd and Pacificlite Engineering Sdn Bhd, invoice, sales agreement and purchase orders. The third defendant was represented by a different firm of solicitors during the first contempt proceedings.

[13] From the documents received from the third defendant, the plaintiff finds many discrepancies which form the basis of this second contempt proceedings.

[14] In the meantime, *vide* an application dated 23 October 2013, the third defendant applied for a discharge from part of the order dated 6 September 2013 (the first contempt proceedings) whereby it was ordered that all the defendants shall pay additional fine of RM100 per day for each day of non-compliance with para. 2(b) of the judgment in respect of products and para. 2(d) in respect of the account of profits. The grounds of the application is that the third defendant has rendered full cooperation and assistance to the plaintiff in complying with the judgment and therefore ceased to be in non-compliance.

[15] As the plaintiff did not raise any objection, the third defendant's application for a discharge was allowed by this court on 8 November 2013.

[16] Subsequently the first, second and fourth defendants also applied for the same order for discharge, premised on the fact that since the plaintiff did not object to the application made by the third defendant, then there is compliance with para. 2(b) and 2(d) of the judgment. These applications are also allowed by this court, which makes the following decision:

A [7] I am of the considered opinion that the plaintiff's no objection to the application for release by the 3rd defendant can only mean that the plaintiff is satisfied that there has been compliance with paragraphs 2(b) and 2(d) of the Judgment dated 6/10/2013. Paragraphs 2(b) and 2(d) of the Judgment dated 6/10/2013 requires the defendants to deliver the products and documents to the plaintiff. Therefore, once the plaintiff did not raise any objection to the 3rd defendant's application, the plaintiff must have been satisfied that there has been compliance with paragraphs 2(b) and 2(d) of the Judgment dated 6/10/2013.

[8] In the premise, the applications in enclosure (72) and (74) are allowed with cost of RM5,000 for each application.

C **The Findings Of The Court**

[17] It is common ground that the acts of contempt must be proved beyond reasonable doubt. What constitutes beyond reasonable doubt is explained in the Supreme Court case of *Chu Choon Moi v. Ngan Sew Tin* [1985] 1 LNS 134; [1986] 1 MLJ 34 where, per Syed Agil Barakbah SCJ (delivering judgment of the court) at p. 38, right column, paras. D-F, it was held:

... We agree that fraud whether made in civil or criminal proceedings must be proved beyond reasonable doubt and cannot be based on suspicion and conjecture ... Proof beyond reasonable doubt does not mean proof beyond the shadow of doubt. The degree of proof need not reach certainty but it must carry a high degree of probability. What it means is that the evidence adduced is such that the Court believes its existence or a prudent man considers its existence probable in the circumstances of the particular case. If such proof extends only to a possibility but not in the least a probability, then it falls short of proving beyond reasonable doubt ...

[18] It is also common ground that the circumstances and categories of facts which may constitute contempt of court are never closed and the scope for development is limitless. In the present case, the case for contempt is premised on the principle of interference with the administration of justice. With regards to this aspect of contempt, the Federal Court in *Monatech (M) Sdn Bhd v. Jasa Keramat Sdn Bhd* [2002] 4 CLJ 401; [2002] 4 MLJ 241 held as follows:

What therefore is contempt of court 'is interference with the due administration of justice' - per Nicholls LJ at p. 923 of *Attorney-General v. Hislop and Another* [1991] 1 All ER 911 (CA):

In view of the generality of the phrase "interference with the due administration of justice" we are of the view that the categories of contempt are never closed. To that extent we respectfully endorse the statement made by Low Hop Bing J, in *Chandra Sri Ram v. Murray Hiebert* [1997] 3 CLJ Supp 518 at pp. 549-550:

The circumstances and categories of facts which may arise and which may constitute contempt of court, in a particular case, are never closed. This is the same position as in the case of negligence

in which the scope for development is limitless. Contempt of court may arise from any act or form whatsoever, ranging from libel or slander emanating from any contemptuous utterance, news item, report or article, to an act of disobedience to a court order or a failure to comply with a procedural requirement established by law. Any of these acts, in varying degrees, affects the administration of justice or may impede the fair trial of sub judice matters, civil or criminal, for the time being pending in any court. The particular matrix of the individual case is of paramount importance in determining whether a particular circumstance attracts the application of the law of contempt. Hence, a positive perception of the facts is a prerequisite in deciding whether or not there is any contravention necessitating the invocation of the law of contempt.

[19] From the factual matrix of this case, it is not in dispute that the second and fourth defendants have filed affidavits where they have denied that they have failed to comply with para. 2 of the judgment:

(i) the fourth defendant, Nga Poh Choo affirmed an affidavit on 4 February 2013 where he said this in para. 10:

> 10. Saya menjawab perenggan 12 Afidavit Pertama tersebut saya menyatakan seperti berikut:
>
> 10.1 Saya menafikan bahawa saya telah gagal untuk mematuhi perenggan 2 Penghakiman tersebut;
>
> 10.2 Sebaliknya, perenggan 2 Penghakiman tersebut telah dipatuhi dengan sepenuhnya walaupun terdapat sedikit kelewatan.
>
> Sesalinan surat Tetuan Rajinder Singh Veriah & Co bertarikh 20 haribulan November, 2012 dilampirkan di sini dan ditandakan sebagai Eksibit 'NPC - 6'.
>
> Sesalinan 'Delivery Order' bertarikh 3 haribulan Disember, 2012 yang membuktikan bahawa acuan-acuan tersebut telah diserahkan kepada Plaintif dilampirkan di sini dan ditandakan sebagai Eksibit 'NPC - 7'.
>
> Sesalinan surat Tetuan Rajinder Singh Veriah & Co bertarikh 21 haribulan November, 2012 dilampirkan di sini dan ditandakan sebagai Eksibit 'NPC - 8'.

(ii) the second defendant, Chuah Teik Huat affirmed an affidavit on 4 February 2013 where he said this in para. 8:

> 8. Saya menjawab perenggan 12 Afidavit Pertama tersebut saya menyatakan seperti berikut:
>
> 8.1 Saya menafikan bahawa saya telah gagal untuk mematuhi perenggan 2 Penghakiman tersebut;
>
> 8.2 Sebaliknya, perenggan 2 Penghakiman tersebut telah dipatuhi dengan sepenuhnya walaupun terdapat sedikit kelewatan.

A Sesalinan surat Tetuan Rajinder Singh Veriah & Co bertarikh 20 haribulan November, 2012 dilampirkan di sini dan ditandakan sebagai Eksibit 'CTH -1'.

Sesalinan 'Delivery Order' bertarikh 3 haribulan Disember, 2012 yang membuktikan bahawa acuan-acuan tersebut telah diserahkan B kepada Plaintif dilampirkan di sini dan ditandakan sebagai Eksibit 'CTH - 2'.

Sesalinan surat Tetuan Rajinder Singh Veriah & Co bertarikh 21 haribulan November, 2012 dilampirkan di sini dan ditandakan sebagai Eksibit 'CTH - 3'.

C **[20]** Further and also for the purpose of the first contempt action, the second and fourth defendants have filed further affidavits where they have affirmed that all relevant documents have been given to the plaintiff:

(i) the fourth defendant, Nga Poh Choo affirmed an affidavit on 1 March 2013 where he said this in paras. 12.4 and 12.5:

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Sebagai menjawab kepada perenggan 9(c) Afidavit tersebut, saya difahamkan seperti berikut:

12.1 ...

12.2 ...

E

12.3 ...

12.4 Berkenaan dengan perenggan 9(c)(iv) Afidavit tersebut saya difahamkan bahawa melalui surat bertarikh 21 haribulan Disember 2012 peguamcara Defendan Pertama, Kedua dan Ketiga telah menyerahkan dokumen-dokumen yang mematuhi F kehendak perenggan 2(b) Perhakiman tersebut;

12.5 Berkenaan dengan perenggan 9(c)(v) Afidavit tersebut saya difahamkan bahawa setelah pemeriksaan dibuat, tiada dokumen-dokumen lain yang dapat dicari bagi tujuan pematuhan perenggan 2(d) Penghakiman tersebut. Kesemua G dokumen-dokumen yang berkenaan telah diserahkan kepada peguamcara Plaintif. Ini telah dinyatakan di dalam surat peguamcara saya, iaitu Tetuan Rajinder Singh Veriah & Co. bertarikh 26 haribulan Februari 2013 kepada peguamcara Plaintif. Surat tersebut merujuk dan menjawab kepada surat peguamcara Plaintif bertarikh 29 haribulan Januari 2013.

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Sesalinan surat Tetuan Rajinder Singh Veriah & Co bertarikh 26 haribulan Februari, 2013 dilampirkan di sini dan ditandakan sebagai Eksibit 'NPC - 10'

(ii) the second defendant, Chuah Teik Huat affirmed an affidavit on 1 March 2013 where he said this in para. 8:

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8. Sebagai menjawab perenggan 8 Afidavit tersebut saya menyatakan bahawa saya telah membaca kandungan Afidavit Nga Poh Choo yang diikrarkan pada 4 haribulan Februari, 2013 dan

Afidavit Jawapan Kedua Nga Poh Choo yang diikrarkan pada 1 haribulan Mac, 2013 dan menerimapakai kandungan Afidavit-Afidavit tersebut setakat mana kandungannya melibatkan saya.

[21] From the documents given by the first, second and fourth defendants, such as the 'Sales Revenue 2011', all the transactions seemed to be concluded before 6 October 2011, before the date of the judgment. The transaction with Bina Puri Construction Sdn Bhd ('Bina Puri') was dated 30 September 2011. However, from the documents received from the third defendant, the invoice issued to Bina Puri was actually dated 1 November 2011.

[22] Added to that, from the same document 'Sales Revenue 2011', invoice 0122 to Boo Power Construction Sdn Bhd is dated 24 August 2011, but from exh. 15 (annexed to an affidavit affirmed by Chin Yuan Tai on 1 November 2013) ('CYT's affidavit'), the same is dated 19 October 2011.

[23] There is also a purchase order from Bina Puri dated 24 October 2011 which shows that the first defendant was still receiving orders despite the judgment. This purchase order was not included in the documents given by the first, second and fourth defendants to the plaintiff. There is here a suppression of material document by the first, second and fourth defendants.

[24] From exh. 17 (annexed to CYT's affidavit), it is clear that the first defendant, through the second and fourth defendants have continued to sell the impugned product after the delivery of the judgment:

	Date of invoice and/or purchase order	Customer
1.	1.11.2011	Bina Puri
2.	1.11.2011	Bina Puri
3.	24.10.2011	Bina Puri
4.	13.1.2012	Boo Power Construction
5.	16.12.2011	Catatan Jaya Sdn Bhd
6.	19.10.2011	Kimsuan Sdn Bhd
7.	19.10.2011	Kimsuan Sdn Bhd
8.	9.1.2012	Welflex Engineering Sdn Bhd
9.	13.11.2011	Jaya Intra Timur Sdn Bhd
10.	21.11.2011	Jaya Intra Timur Sdn Bhd
11.	11.11.2011	Kimlun Sdn Bhd
12.	2.11.2011	Kimsuan Sdn Bhd
13.	9.4.2012	Tectronics Works Company
14.	28.10.2011	Pembinaan Tong Tor Sdn Bhd

15.	23.11.2011	Pembinaan Tong Tor Sdn Bhd
16.	19.1.2012	Pembinaan Tong Tor Sdn Bhd
17.	2.2.2012	Pembinaan Tong Tor Sdn Bhd

[25] The above sales are clearly not included in the 'Sales Revenue 2011' given by the first, second and fourth defendants. This would amount to misleading of material facts and suppression of material facts.

[26] Added to that, from these sales recorded after the date of the judgment, it is clear that not all the moulds have been delivered to the plaintiff. This clearly contradicts the affirmed statements by the second and fourth defendants that:

> Sesalinan 'Delivery Order' bertarikh 3 haribulan Disember, 2012 yang membuktikan bahawa acuan-acuan tersebut telah diserahkan kepada Plaintif dilampirkan di sini dan ditandakan sebagai Eksibit 'CTH - 2'.

[27] Therefore, I find that when the first, second and fourth defendants have affirmed affidavits to state that they have complied with the judgment and that they have given all the relevant documents to the plaintiff, they have lied on oath with regards to the same. They have conveniently changed the dates of the invoices from post to pre judgment dates. They have lied on oath with regards to the delivery of the moulds. They have also failed to disclose the sales that they have made post judgment. They have clearly suppressed facts to the detriment of the plaintiff, material facts which are required for the purpose of assessing the profits as ordered by the trial judge.

[28] It is the first, second and fourth defendants' contention that the affidavit of the third defendant is not reliable and must not be accepted by this court. However, bearing in mind that the first, second and fourth defendants themselves have relied on the same documents given by the third defendant to the plaintiff to apply for a discharge, they now cannot say that the same documents must also be rejected. In their applications for a discharge, among the grounds relied on are as follows:

> (i) Defendan Ketiga telah serahkan pelbagai dokumen-dokumen kepada Plaintif dan ini telah diakui oleh pihak Plaintif dan pihak Plaintif tidak mempunyai sebarang bantahan kepada permohonan Defendan Ketiga.
>
> (j) Jika pihak Plaintif tidak mempunyai bantahan terhadap permohonan Defendan Ketiga, pihak Plaintif tidak mempunyai sebarang bantahan terhadap permohonan ini.

[29] I also agree with the plaintiff that the first, second and fourth defendants did not question the authenticity of the documents, except to put the blame on the third defendant. It is the first, second and fourth defendants' submission that since the third defendant was the director of sales and marketing of the first defendant, then he must have access to all the sales and marketing documents. Thus, the first, second and fourth defendants submit that the alleged sales documents can only be created by the third defendant.

[30] However, bearing in mind that since the second and fourth defendants are holding top position as chief executive officer and director of the first defendant, I do not find any basis to lay all the blame on the third defendant. Added to that, since both the wives of the second and fourth defendants are also shareholders of the first defendant, it is only in their personal and/or family interest to increase the sales of the first defendant. Therefore, any new sales accruing would also benefit the second and the fourth defendants and their wives.

[31] In any event, they have affirmed that no other documents are available after they have made the checking/inquiries. In their affidavits, they made the following statement:

> 12.5 Berkenaan dengan perenggan 9(c)(v) Afidavit tersebut saya difahamkan bahawa **setelah pemeriksaan dibuat**, tiada dokumen-dokumen lain yang dapat dicari bagi tujuan pematuhan perenggan 2(d) Penghakiman tersebut. **Kesemua dokumen-dokumen** yang berkenaan telah diserahkan kepada peguamcara Plaintif. Ini telah dinyatakan di dalam surat peguamcara saya, iaitu Tetuan Rajinder Singh Veriah & Co. bertarikh 26 haribulan Februari 2013 kepada peguamcara Plaintif. Surat tersebut merujuk dan menjawab kepada surat peguamcara Plaintif bertarikh 29 haribulan Januari 2013.
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> Sesalinan surat Tetuan Rajinder Singh Veriah & Co bertarikh 26 haribulan Februari, 2013 dilampirkan di sini dan ditandakan sebagai Eksibit 'NPC - 10'

[32] The defendants also made the allegations of conspiracy between the plaintiff and the third defendant. However, I find this to be a bare allegation and the first, second and fourth defendants have failed to prove the same. Added to that, this is the first time that the conspiracy issue was raised, whereas during the main trial and the first contempt proceedings there was no issue on conspiracy and both the judgment and the first contempt order was made against all the defendants, including the third defendant.

[33] The first, second and fourth defendants also submitted that the sales and marketing relating to Innotech Engineering Systems Sdn Bhd have nothing to do with them as they are not the directors and shareholders of the said company. However, there is no dispute that Innotech Engineering Systems Sdn Bhd are selling "innotech formwork system", which are actually the first defendant's offending products. This can be seen from the letters issued by Innotech Engineering Systems Sdn Bhd to Tectronics Works Company dated 23 March 2012, and to Perfact Hallmak Sdn Bhd dated 8 May 2012 (from exh. 16). Added to that, from the statutory declaration of Lai Kok Wan who affirmed that apart from the third defendant, he also dealt with the second defendant, who acted on behalf of the first defendant in several projects. Lai Kok Wan also affirmed that even though it was the first defendant which supplied the innotech formwork system, he was told by the second defendant that the commercial invoices will be issued by

Innotech Engineering System Sdn Bhd. This is further supported by an email dated 22 February 2012 from the second defendant to Lai Kok Wan who signed off as the CEO of Innotech Formwork Systems Sdn Bhd, formerly known as N&C Resources Sdn Bhd, the first defendant. Therefore, I find no merit in the first, second and fourth defendants' allegation that it was the third defendant who was involved in the sales of the offending products by Innotech Engineering System Sdn Bhd.

[34] The first, second and fourth defendants also submitted that in the first contempt proceedings, the court has held that the defendants have failed to comply with para. 2(b) and (d) of the judgment. Therefore the plaintiff is barred by the doctrine of *res judicata* from raising any issue on the non-compliance with the judgment. However, the basis of the current contempt is not on non-compliance with the judgment, but premised on the wider concept of interference with the due administration of justice. This would include lying on oath on material facts, misleading the material facts and suppression of material facts.

[35] Therefore, on a critical examination of the various affidavits and documentary exhibits, I can only conclude that the first, second and fourth defendants have failed to offer any credible explanation as to the discrepancy in the sales documents and on the suppression of the facts of the sales post judgment.

[36] The said conduct of the first, second and fourth defendants clearly amounts to an interfering with the due administration of justice and constituted contempt of court. In *Murray Hiebert v. Chandra Sri Ram* [1999] 4 CLJ 65; [1999] 4 MLJ 321, the Court of Appeal held that:

> To constitute contempt of court, it is not necessary to prove affirmatively that there had been an actual interference with the administration of justice by reason of offending statements. It is enough if it is likely or it tends in any way to interfere with the proper administration of justice ...

[37] The first, second and fourth defendants here have not just acted in a manner which was likely to interfere with the proper administration of justice but had actually directly interfered with it by the act of lying on oath and by suppressing material documents.

[38] But for an act to amount to a contempt of court, the alleged contemptuous act must be sufficiently serious and connected with the proceedings in question. The Federal Court in *Monatech (M) Sdn Bhd v. Jasa Keramat Sdn Bh*d [2002] 4 CLJ 401; [2002] 4 MLJ 241 held as follows:

> The Court of Appeal in finding of the facts of the case that there was commission of contempt of relied on what Lloyd LJ in *Attorney General v. Newspaper Publishing Plc*, *inter alia* said at p. 378: The act must be sufficiently serious and sufficiently closely connected with the particular proceedings.

[39] I also find that the acts of the first, second and fourth defendants are serious and connected to the proceedings. They have lied on oath on material facts and had suppressed material facts which are crucial for the purpose of executing para. (d) of the judgment with regards to "accounts of profits". I therefore find that there was indeed an interference with the administration of justice warranting a committal order.

[40] In *Tan Sri Dato' (Dr) Rozali Ismail & Ors v. Lim Pang Cheong & Ors* [2012] 2 CLJ 849; [2012] 3 MLJ 458, the Federal Court adopted the definition of contempt in *Oswald's Contempt of Court* when it held as follows:

> ... *Oswald's Contempt of Court* (3rd Edn.) at p. 6 gives a general definition of contempt of court as follows:
>
> > To speak generally, contempt of court may be said to be constituted by any conduct that tends to bring the authority and administration of law into disrespect or disregard, or to interfere with or prejudice parties, litigants or their witnesses during litigation.

[41] In *Plastech Industrial Systems Sdn Bhd lwn. Pembinaan Sumber Emas Sdn Bhd* [2010] 1 LNS 1772; [2010] MLJU 1789, the court held that where the deponent has lied to court in an affidavit, the same amounts to an act in contempt of court.

[42] In the book *"The Law of Contempt"* (3rd edn) by Borries and Lowe, the learned authors cited that deliberate suppression of facts as the most serious example of abuse of process, and said this:

> The most serious example of abuse of process is conduct which is intended to deceive the court, for example, by deliberate suppression of facts or by the presentation of falsehood, but the term also includes bringing of frivolous or vexatious proceedings.

[43] Suppression of material facts have also been held to be contempt by the Federal Court in *Cheah Cheng Hoc v. Public Prosecutor* [1986] 1 CLJ 169; [1986] CLJ (Rep) 84; [1986] 1 MLJ 299, where it was held at p. 87 (CLJ); p. 300 (MLJ):

> The Court has power to punish as contempt any misuse of the Court's process eg forging or altering of court or other deceits of the kind or deceiving the court by deliberately suppressing a fact or giving false fact.

[44] In the premise, I am of the considered opinion that the plaintiff has successfully proven beyond reasonable doubt that the first, second and fourth defendants have committed acts of contempt of court. I find the first, second and fourth defendants guilty of contempt of court.

The Punishment

[45] It is pertinent to note that the contemptuous acts committed by the first, second and fourth defendants were committed during the first contempt proceedings. Not only did they lie on affidavits, but they have also

A deliberately suppressed facts and gave false facts to the court and to the plaintiff. This is clearly a serious interference of the due administration of justice. At the same time, I have also taken note of the mitigations given by the contemnors, their counsel and their written mitigation. Having considered all the above considerations, I am of the view that a custodial
B sentence is warranted. In the premise, I sentence the second and the fourth defendants to two months imprisonment each. With regards to the first defendant, I order the company to pay a fine of RM50,000.

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